

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Frederick Burton, Individually And On Behalf of All Others Similarly Situated,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.,	)	
	)	
Defendants.	)	
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Richard Stanton (as Trustee for Ashley Stanton), On Behalf of All Others Similarly Situated,	)	Case No. 1:08-cv-03037-LAP
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.,	)	
	)	
Defendants.	)	
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**NOTICE OF MOTION OF MOTION OF GERALD WENDEL AND  
ROBERT BERZIN FOR CONSOLIDATION OF ACTIONS,  
APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF  
SELECTION OF COUNSEL**

PLEASE TAKE NOTICE that class members Gerald Wendell and Robert Berzin (“Movants”), by their counsel, will hereby move this Court on a date and at such time as may be designated by the Court, at 500 Pearl Street, New York, New York for an Order (filed herewith): (i) consolidating the above-captioned related actions; (ii) appointing them as Lead Plaintiff; (iii) approving their selection of Girard Gibbs LLP to serve as Lead Counsel, Stueve Siegel Hanson LLP to serve as Co-Lead Counsel, and Seeger Weiss LLP to serve as Liaison Counsel; and (iv) granting such other and further relief as the Court may deem just and proper. In support of this Motion, Movants submit herewith a Memorandum of Law, [Proposed] Order, and the Declaration of Jonathan K. Levine and all exhibits attached thereto.

DATED: May 27, 2008

Respectfully submitted,

**GIRARD GIBBS LLP**

By: Jonathan K. Levine  
Jonathan K. Levine (JL-8390)

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**Proposed Co-Lead Counsel**

Christopher A. Seeger (CS-4880)  
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**Proposed Liaison Counsel**

**CERTIFICATE OF SERVICE**

I, Jonathan K. Levine, hereby certify that on May 27, 2008, I caused the following document(s) to be filed electronically with the United States District Court for the Southern District of New York through the Court's mandated ECF service:

1. **NOTICE OF MOTION OF MOTION OF GERALD WENDEL AND ROBERT BERZIN FOR CONSOLIDATION OF ACTIONS, APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF SELECTION OF COUNSEL; AND**
2. **[PROPOSED] ORDER CONSOLIDATING ACTIONS, APPOINTING GERALD WENDEL AND ROBERT BERZIN AS LEAD PLAINTIFF, AND APPROVING LEAD PLAINTIFFS' SELECTION OF COUNSEL**

Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document(s) upon confirmation of e-filing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27<sup>th</sup> day of May, 2008 at San Francisco, California.

/s/ Jonathan K. Levine

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FOR THE SOUTHERN DISTRICT OF NEW YORK**

Frederick Burton, Individually And On Behalf of All Others Similarly Situated,	)	
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Plaintiff,	)	
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Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.,	)	
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Defendants.	)	
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	)	
Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.,	)	
	)	
Defendants.	)	
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**[PROPOSED] ORDER CONSOLIDATING ACTIONS, APPOINTING  
GERALD WENDEL AND ROBERT BERZIN AS LEAD PLAINTIFF, AND  
APPROVING LEAD PLAINTIFFS' SELECTION OF COUNSEL**

Upon consideration of the motions and supporting papers filed by the movants for lead plaintiff in the above-captioned actions and for good cause shown,

**IT IS HEREBY ORDERED THAT:**

1. The Motion Of The Gerald Wendel And Robert Berzin For Consolidation Of Actions, Appointment As Lead Plaintiff, And Approval Of Selection Of Counsel is **GRANTED**;

2. The above-captioned actions arise out of common alleged facts and include the same alleged claims against the same Defendants. Accordingly, they are hereby consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.

3. Class Members Gerald Wendel and Robert Berzin are hereby **APPOINTED** to serve as Lead Plaintiff in the consolidated action, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995.

4. The law firm of Girard Gibbs LPP is hereby **APPOINTED** to serve as Lead Counsel for the Class, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995, in the above-captioned action.

5. The law firm of Stueve Siegel Hanson LPP is hereby **APPOINTED** to serve as Co-Lead Counsel for the Class, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995, in the above-captioned action.

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6. The law firm of Seeger Weiss LPP is hereby **APPOINTED** to serve as Liaison Counsel for the Class, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995, in the above-captioned action.

**SO ORDERED.**

DATED: \_\_\_\_\_, 2008

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THE HONORABLE LORETTA A. PRESKA  
UNITED STATES DISTRICT JUDGE